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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

LORRAINE M. ESTRADA,

Plaintiff and Respondent,

v.

MI H. KIM,

Defendant and Appellant.

B292482

(Los Angeles County  
Super. Ct. No.  
18STRO05160)

APPEAL from an order of the Superior Court of Los Angeles County, Dean Hansell, Judge. Dismissed.

Law Offices of Guy R. Bayley and Guy R. Bayley for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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Mi Kim appeals from the trial court's entry of a civil harassment restraining order. Because the order has expired and the record does not reflect any request for renewal of the order, we dismiss the appeal as moot.

On July 19, 2018, Lorraine Estrada filed a request under Code of Civil Procedure section 527.6 for a civil harassment restraining order against Kim. After an August 9, 2018 hearing on Estrada's request, the trial court entered the restraining order and set it to expire at midnight on February 8, 2019.

Kim filed a timely notice of appeal. Because the restraining order had expired on February 8, 2019, we requested supplemental briefing under Government Code section 68081 regarding whether the expiration of the restraining order had rendered the appeal moot.

"If relief granted by the trial court is temporal, and if the relief granted expires before an appeal can be heard, then an appeal by the adverse party is moot. [Citation.] However, 'there are three discretionary exceptions to the rules regarding mootness: (1) when the case presents an issue of broad public interest that is likely to recur [citation]; (2) when there may be a recurrence of the controversy between the parties [citation]; and (3) when a material question remains for the court's determination.' " (*Environmental Charter High School v. Centinela Valley Union High School Dist.* (2004) 122 Cal.App.4th 139, 144; *Harris v. Stampolis* (2016) 248 Cal.App.4th 484, 495 (*Harris*).)

Kim contends her controversy with Estrada may recur because she and Estrada continue to be in a landlord/tenant relationship. Although that information is not to be found in the record, Kim contends "this should be presumed in the absence of

any indication in the record to the contrary.” “Thus it must be considered possible, and even likely,” Kim explains, “that some controversy may reoccur, and that another court proceeding will develop . . . .”

One of the “immutable rules” of appellate practice is that “if it is not in the record, it did not happen.” (*Protect Our Water v. County of Merced* (2003) 110 Cal.App.4th 362, 364.) Absent statutory or other guidance to the contrary, we are not in a position to presume that the appellant has demonstrated facts that are not in the record.

The record discloses no support for any of the three discretionary exceptions to the rules regarding mootness. In *Harris*, the court exercised its discretion to review a civil harassment restraining order after the restraining order *was renewed*. “Given the renewal of the restraining order,” the court said, “it seems likely that the controversy will recur between the parties.” (*Harris, supra*, 248 Cal.App.4th at p. 496.) Here, the record affirmatively demonstrates that the restraining order at issue has expired. The record reveals no request for renewal, *much less an actual renewal* of the restraining order.

Because there was no request for renewal, Kim’s argument is further attenuated. Kim argues that because she and Estrada continue to be in a landlord/tenant relationship (a fact not disclosed in the record), we should assume the controversy will recur. Were we to do so, we would effectively gut the mootness doctrine as it relates to civil harassment restraining orders. These orders expire either by their terms or by operation of law, regardless of whether the parties’ relationship—whatever it may be—continues or ends. If we were to accept the premise of Kim’s argument, we would need to assume (absent any record evidence)

that every relationship continued beyond the expiration of the restraining order *and* that the parties to those relationships were incapable of resolving whatever differences resulted in the expired restraining orders. We are not prepared to make those assumptions.

This case does not present an issue of broad public interest that is likely to recur; it is a dispute between two parties, and Kim's appeal challenges only the sufficiency of the evidence against her. The record does not reflect that the restraining order was renewed, so there is no basis from which we could conclude that the controversy between the parties is likely to recur. And the only question presented on appeal—whether the evidence presented in the trial court was sufficient to support the restraining order—no longer remains a material question as the restraining order expired months ago (before Kim filed her opening brief).

Because we have concluded that Kim's appeal is moot, we dismiss it without reaching the merits of her contentions.

### **DISPOSITION**

The appeal is dismissed. Respondent is awarded costs on appeal.

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CHANNEY, Acting P. J.

We concur:

BENDIX, J.

WEINGART, J.\*

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.